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In The

Supreme Court of the United States

October Term, 1977

No. 74, ORIGINAL

STATE OF GEORGIA, Plaintiff,

versus

STATE OF SOUTH CAROLINA, Defendant.

ANSWER AND COUNTERCLAIM

The State of South Carolina in answer and by way of counterclaim to the complaint of the State of Georgia alleges:

First Defense

1. South Carolina denies each and every allegation of the complaint not hereinafter specifically admitted.

2. It admits paragraphs 1, 22 and 23 of the complaint.

3. It admits that paragraph 2 sets forth a portion of the original letters patent.

4. It admits paragraph 3, but reference is made to the full text of the Convention (Treaty) of Beaufort, documents relating to ratification, notes, maps and definitions connected therewith as to its implications and meaning.

5. It admits that paragraph 4 sets forth a part of the Convention of Beaufort.

6. As to paragraph 5, reference is made to the terms of the Convention of Beaufort and to the decision of this Court in *Georgia v. South Carolina*, 257 U. S. 516 (1922).

7. It admits only so much of paragraph 6 as alleges that a boundary dispute exists between Georgia and South Carolina, the full extent of which is not set forth in said paragraph of the complaint.

8. It admits only so much of paragraph 7 as alleges the existence of the two United States Geological Survey maps.

9. It admits only so much of paragraph 8 as alleges that the United States Army Corps of Engineers has performed work in and near the Savannah River.

10. As to paragraph 9, reference is made to the Convention of Beaufort, and to other pertinent charts, maps, notes and facts pertaining to changes in the Savannah River.

11. It denies paragraphs 10, 11, 12 and 13.

12. As to paragraph 14, that part of the Concurrent Resolution as set forth is admitted.

13. As to paragraph 15, reference is made to the specific correspondence alleged, as to its limits and nature, and it is denied that the correspondence referred to establishes the position of the State of South Carolina in this action.

14. As to paragraph 16, that part of the Resolution as set forth is admitted.

15. As to paragraph 17, the number of acres of waters, water bottoms, high ground and marshland is not yet calculated, but it is extensive.

16. As to paragraph 18, it is admitted that meetings have taken place between certain representatives of the two States; however, Georgia officials have never met with the full Boundary Commission appointed by South Carolina in the spring of 1977.

17. As to paragraphs 19, 20 and 21, the dispute between Georgia and South Carolina has created problems

for South Carolina as well as Georgia, and for the citizens of each State, concerning the ownership of land, marsh, waters and waterbottoms and law enforcement. An incident did occur on ocean waters on June 29, 1977, involving a shrimp fisherman, but the allegations of fact and conclusions of law stated in paragraph 21 of the complaint are not admitted, except that on or about July 22, 1977, the Governor of South Carolina did refuse extradition of the shrimp fisherman.

Second Defense and First Counterclaim

18. If any of the islands mentioned in the complaint or in question in this action were within the boundary of the State of Georgia under the Convention of Beaufort, which South Carolina specifically denies, the present ownership of Georgia does not include accretions to the lands of South Carolina.

Third Defense and Second Counterclaim

19. Jones Island is not presently, and never has been an island in the Savannah River. Oyster Bed Island was not an island in the river in 1787 and is not now an island.

Fourth Defense and Third Counterclaim

20. Pennyworth Island, the Barnwell Islands, and the "several unnamed islands", if any, (or the land or lands represented thereby whether or not islands) referred to in the complaint were not islands in the Savannah River within the meaning of the 1787 Convention of Beaufort and are part of South Carolina.

Fifth Defense and Fourth Counterclaim

21. Through accretion and/or the gradual accumulation of silt and other materials, the Barnwell Islands and other former islands have become a part of the mainland

of South Carolina, and are not islands in the Savannah River.

Sixth Defense and Fifth Counterclaim

22. The true boundary between the States of Georgia and South Carolina in the lower reaches of the Savannah River is the middle of the northernmost branch or stream of the river as it existed in 1787 and is such that Pennyworth Island, the Barnwell Islands, Jones Island, Oyster Bed Island and "several unnamed islands", if any, (or the land or lands represented thereby, whether or not islands) referred to in the complaint lie within South Carolina and are a part thereof.

Seventh Defense and Sixth Counterclaim

23. At the time of the adoption of the Convention of Beaufort, the mouth of the Savannah River was located at a point immediately east of Tybee Island where the stream of the Savannah emptied into the sea.

24. As provided by Article I of the Convention, the mouth of the Savannah River determines the most southerly or seaward point of separation of land mass between the States of Georgia and South Carolina.

Eighth Defense

25. Both the States of Georgia and South Carolina have always recognized that a point in the historical mouth of the Savannah River is the end of the inland boundary between the two States, which has been demarked by long-established jetties, and Georgia is estopped to claim any boundary line located north of the historical mouth of the Savannah River.

Ninth Defense and Seventh Counterclaim

26. For scores of years South Carolina has openly asserted and exercised dominion, control and jurisdiction over Jones Island, Oyster Bed Island, Pennyworth Island, the Barnwell Islands and other "unnamed islands", if any, (or the land or lands represented thereby, whether or not islands), and all other lands and waters to the north of the middle of the northernmost branch or stream of the Savannah River, and Georgia has expressly or impliedly acquiesced therein for such a long time as to be conclusive of the jurisdiction, title and rightful ownership of such lands, islands, and waters in the State of South Carolina.

Tenth Defense and Eighth Counterclaim

27. For scores of years South Carolina has openly asserted and exercised exclusive dominion, control and jurisdiction over Jones Island, Oyster Bed Island, Pennyworth Island, the Barnwell Islands and other "unnamed islands", if any, (or the land or lands represented thereby, whether or not islands), and all other lands and waters to the north of the middle of the northernmost branch or stream of the Savannah River, and Georgia has expressly or impliedly acquiesced therein for such a long time as to be estopped to make claim upon these lands, islands, and waters.

Eleventh Defense and Ninth Counterclaim

28. The State of Georgia has abandoned all claims and title to and the State of South Carolina has historically exerted jurisdiction over Jones Island, Oyster Bed Island, Pennyworth Island, the Barnwell Islands and other "unnamed islands", if any, (or the land or lands represented thereby, whether or not islands), and all other lands and waters to the north of the middle of the northernmost branch or stream of the Savannah River.

Twelfth Defense and Tenth Counterclaim

29. The proper point for the commencement of the lateral seaward boundary between the States of Georgia and South Carolina is and should be immediately to the east of Tybee Island, where the river has historically emptied into the sea, and which has been demarked by long-established jetties.

Thirteenth Defense and Eleventh Counterclaim

30. An historical lateral seaward boundary within the limits of the territorial seas has never been established between the two States; and the proper legal method for determining the location of this boundary is to apply the equidistant method as set forth in Paragraphs 8 and 12 of the Convention on the Territorial Seas and Contiguous Zones, an international treaty ratified by the United States on March 24, 1961, TIAS 5639, 15 US Treaties 1606.

WHEREFORE, the State of South Carolina prays:

(a) The Court enter its decree declaring the true and correct boundary line between the State of Georgia and the State of South Carolina in the lower reaches and the mouth of the Savannah River, and to the limit of the territorial sea,

(b) The Court declare the boundary to be the middle of the northernmost branch or stream of the Savannah River, as such river existed in 1787 but as since changed and altered by natural and man-made accretions and diversions, and that Oyster Bed Island, Jones Island, Pennyworth Island, the lands now adjoined to South Carolina and formerly known as the Barnwell Islands, and "several unnamed islands", if any, (or the land or lands represented thereby, whether or not islands) referred to in the complaint are declared to be within South Carolina,

(c) The Court declare the mouth of the Savannah River to be that point immediately east of Tybee Island where the stream of the Savannah River empties into the sea between the long-established jetties, all other waters of the Savannah having merged to form this stream,

(d) The Court declare the lateral seaward boundary between the two States in the territorial sea to commence at the mouth of the Savannah River as fixed by the jetties and, by applying the equidistant method provided by the international Convention on The Territorial Seas and Contiguous Zones, fix the boundary to the limit of the territorial sea,

(e) The Court issue temporary and permanent injunctions prohibiting the State of Georgia from attempting to enforce its laws or to assert jurisdiction within the lands, islands, waters and waterbottoms north of the boundary line determined by this Court,

(f) For such other and further relief as may be just and proper.

Respectfully submitted,

DANIEL R. McLEOD,
Attorney General,

FRANK K. SLOAN,
Deputy Attorney General,

KENNETH P. WOODINGTON,
Assistant Attorney General,

KATHERINE W. HILL,
Assistant Attorney General,

KEITH M. BABCOCK,
Staff Attorney,

ROBERT D. COOK,
Staff Attorney
Attorneys for Defendant,
P. O. Box 11549,
Columbia, S. C. 29211.

Of Counsel:

THOMAS E. McCUTCHEN,
WHALEY, McCUTCHEN & BLANTON,
1414 Lady Street,
Columbia, S. C. 29211,

M. ELIZABETH CRUM,
Attorney-at-Law,
P. O. Box 11867,
The State House,
Columbia, S. C. 29211.

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Please address all correspondence to:
FRANK K. SLOAN,
Deputy Attorney General,
P. O. Box 11549,
Columbia, S. C. 29211,
(803) 758-3970.